

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
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In the Matter of )  
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Revision of the Commission's Rules )  
To Ensure Compatibility with )  
Enhanced 911 Emergency Calling Systems )

CC Docket No. 94-102

To: The Commission

**COMMENTS OF UNITED STATES CELLULAR CORPORATION**

United States Cellular Corporation ("USCC"), by its undersigned counsel, hereby submits these comments in response to the Public Notice issued by the Federal Communications Commission on September 16, 2002 in the above referenced proceeding.<sup>1</sup> In the Public Notice, the Commission seeks comment on Petitions for Reconsideration filed by ALLTEL Communications, Inc. ("ALLTEL") and Dobson Cellular Systems, Inc. ("Dobson") and American Cellular Corporation ("American Cellular") of the Commission's July 11, 2002 order staying the implementation deadlines for phase II E911 service for small and mid-sized carriers.<sup>2</sup> USCC generally supports the Commission's decision in the *Order to Stay* to extend the deadlines for phase II implementation for non-nationwide carriers. However, as demonstrated more fully below, USCC strongly supports ALLTEL, Dobson and American Cellular in their Petitions for Reconsideration urging the Commission to reconsider certain aspects of the *Order to Stay* that

<sup>1</sup> See *Wireless Telecommunications Bureau Seeks Comment on Petitions for Reconsideration Regarding Order to Stay E911 Phase II Rules for Small Carriers*, Public Notice, CC Docket No. 94-102 (released September 16, 2002).

<sup>2</sup> See *Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, Phase II Compliance Deadlines for Non-Nationwide CMRS Carriers*, Order to Stay, CC Docket No. 94-102, FCC 02-210 (released July 26, 2002) ("*Order to Stay*").

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impose a strict liability standard on carriers who fail to meet the new deadlines due to circumstances beyond their control.

**I. The Commission ignored the record evidence as well as the practical realities in establishing rules that advocate a strict liability enforcement policy against wireless carriers, even when compliance is demonstrably beyond their control.**

In its *Order to Stay*, the Commission delayed by approximately seven months from the date of the order the deadlines for phase II implementation for Tier II carriers.<sup>3</sup> In doing so, the Commission recognized that small and mid-sized carriers face particular obstacles to E911 roll-out due in part to their relatively small size and corresponding lack of market power. The Commission recognized that “handset vendors and network-based location technology vendors give priority to the larger, nationwide carriers,”<sup>4</sup> and that “there are technical and equipment availability problems that prevent small and mid-sized carriers from implementing E911 phase II pursuant to the current deadlines.”<sup>5</sup> The Commission realized that delays in the phase II deadlines for small and mid-sized carriers were necessary because of those carriers’ dependence on other parties in order to achieve compliance with phase II deployment milestones. Logically, therefore, such dependence on other non-affiliated third parties should be taken into account before any determination is made that a carrier is liable for not meeting one of those milestones.

Despite recognition of carriers’ dependence on others *to* meet phase II deadlines, however, the Commission adopted a strict liability enforcement standard should a carrier not reach one of the implementation benchmarks in the *Order to Stay*, instead of allowing for

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<sup>3</sup> The Commission’s definition of Tier II carriers – carriers with over 500,000 subscribers as of the end of 2001 – includes USCC.

<sup>4</sup> *See Order to Stay*, ¶ 11.

<sup>5</sup> *See id.*, ¶ 17.

consideration of vendors' or manufacturers' roles in the carrier's inability to comply. The order states that carriers *will be held liable*, even if such failure is demonstrably not the fault of the carrier. The Commission stated that "[i]f any carrier does not have compliant Phase II service available on the dates set forth herein, *it will be deemed noncompliant*" and subsequently referred to the Commission's Enforcement Bureau.<sup>6</sup> Furthermore, carriers are expressly prohibited from using a vendor's or a manufacturer's failure to do its part in the phase II roll-out as an explanation for its own inability to comply with the milestones in the *Order to Stay*.<sup>7</sup> Instead, a carrier's response to a vendor or manufacturer that is negatively impacting the carrier's ability to comply may be used only as a possible mitigation factor in deciding on the magnitude of the forfeiture, as opposed to a factor in deciding whether the forfeiture is appropriate to begin with.' Such a standard ignores the realities for small and mid-sized carriers that the Commission has already acknowledged – namely, that these carriers are dependent, *inter alia*, on vendors and manufacturers supplying phase II compliant products in order to meet phase II milestones.

Subsequent to the release of the *Order to Stay*, the Commission has been presented with additional evidence that delays in phase II E911 roll-out are not the fault of the wireless carriers. Both Sprint PCS and Verizon Wireless, among others, have demonstrated to the Commission that delays in LEC readiness and ALI database upgrades are having a negative impact on the roll-out of phase II E911 service.' In particular, it appears that the Commission's

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<sup>6</sup> See *id.*, ¶ 37 (emphasis added).

<sup>7</sup> See *id.*

<sup>8</sup> See *id.* (internal citation omitted).

<sup>9</sup> See, e.g., *Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, Phase II Compliance Deadlines for Non-Nationwide CMRS Carriers*, Verizon Wireless Written Ex Parte Presentation, CC Docket No. 94-102 (August 19, 2002); *Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, Phase II Compliance Deadlines for Non-Nationwide CMRS Carriers*, Sprint PCS Written Ex Parte Communication, CC Docket No. 94-102 (September 9,

assumption underlying the *City of Richardson* decision – namely, that PSAPs will be capable of receiving and utilizing phase II information within six months after submitting a request – is simply not valid.” According to the Commission's standard as articulated in the *Order to Stay*, even if the delays in phase II roll-out are due to lack of PSAP readiness because of failures on the part of the LEC, Tier II carriers will be held liable for failure to meet the phase II milestones. This standard ignores the realities currently being encountered by the nationwide carriers.” There is no basis in the E911 record for the Commission to assume that the same problems will not be encountered by small and mid-sized carriers as well. If anything, the issues of LEC responsiveness and PSAP readiness will only become worse as the size of the markets gets smaller. These issues should be taken into account prior to a finding of noncompliance against the wireless carrier.

**II. The Commission is obligated to afford carriers an opportunity to respond to allegations of non-compliance prior to a finding of liability against the carrier.**

Under the Communications Act of 1934, as amended, and the Commission's rules, the Commission is obligated to afford carriers an opportunity to respond to an allegation of non-compliance prior to a finding of liability. The Commission's attempt to sidestep these requirements threatens the determination by Congress to afford every licensee basic due process prior to imposing a forfeiture.

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2002).

<sup>10</sup> See *Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, Petition of City of Richardson, Texas*, 16FCC Rcd 18982 (2001).

<sup>11</sup> In fact, nationwide carriers have asked the Commission to reconsider a similar strict liability provision in their phase II E911 extension orders. See, e.g., *Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, Verizon Wireless Petition for Reconsideration, CC Docket No. 94-102 (November 13, 2001).

The Communications Act requires that a licensee be provided with notice of an alleged violation of the statute and the opportunity to defend itself prior to a finding of liability. Section 503(b)(4) of the Communications Act provides that no forfeiture penalty shall be imposed on a licensee unless the Commission issues a written notice of apparent liability to the licensee and the licensee has an opportunity to show why no such forfeiture penalty should be imposed.” In fact, section 503(b)(1) requires that a licensee’s liability shall be evaluated by the Commission either by issuing a notice of apparent liability, with an opportunity for the licensee to respond, or by providing notice and an opportunity for a hearing, *before* any finding that the licensee shall be liable for a forfeiture penalty.<sup>13</sup> Thus, it is inconsistent with the Communications Act to hold a carrier liable prior to affording that carrier notice of apparent liability and the opportunity to respond.

It is also inconsistent with the Commission’s rules to impose a forfeiture on a licensee without providing prior notice and an opportunity to respond. Section 1.80(f) of the Commission’s rules provides that *before* a finding of forfeiture is made, the Commission *will* issue a notice of apparent liability.<sup>14</sup> That section also specifically requires that a licensee will be afforded an opportunity to respond and demonstrate why a forfeiture penalty should not be imposed.<sup>15</sup> Thus, the Commission cannot prejudge a finding of carrier liability for apparent non-compliance with the phase II deployment milestones without providing that carrier with an opportunity to rebut the allegations before such a finding is made.

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<sup>12</sup> See 47 U.S.C. § 503(b)(4)(2002).

<sup>13</sup> See 47 U.S.C. § 503(b)(1)(2002).

<sup>14</sup> See 47 C.F.R. § 1.80(f)(2002) (emphasis added).

<sup>15</sup> See 47 C.F.R. § 1.80(f)(3)(2002).

**111. Conclusion**

For the foregoing reasons, USCC respectfully requests that the Commission reconsider the above-referenced provisions of its *Order to Stay*.

Respectfully submitted,

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CORPORATION



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